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IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF ARIZONA

Scott Huminski,

No. CV11-0896 PHX DGC

**Plaintiff,**

## ORDER

VS.

Hector Heretia, et al.,

### Defendants.

Plaintiff Scott Huminski has filed a Motion To Stay Pending Appeal. Doc. 70. For the reasons that follow, the motion will be denied.

16        “The standard for evaluating stays pending appeal is similar to that employed by  
17        district courts in deciding whether to grant a preliminary injunction.” *Lopez v. Heckler*,  
18        713 F.2d 1432, 1435 (9th Cir. 1983). The moving party must show both a probability of  
19        success on the merits and irreparable injury, or the existence of serious questions and that  
20        the balance of hardships tips sharply in his favor. *Id.* As explained in the Court’s orders  
21        denying Plaintiff’s first and second motions for preliminary injunctions, Plaintiff has  
22        failed to meet this standard. *See* Docs. 42, 68. Plaintiff therefore has not shown that he is  
23        entitled to a stay pending appeal.

24 Plaintiff has also filed a Notice of Dismissal of Claims. Doc. 72. The notice  
25 purports to dismiss “all claims in this suit that are not related to the issues presented in  
26 future decisions of the two appeals of this case now pending before the United States  
27 Court of Appeals for the Ninth Circuit or the Supreme Court.” *Id.* The notice is  
28 ineffective for two reasons.

1           First, once defendants have filed an answer (as they have in this case), a plaintiff  
2 may dismiss claims only by filing a stipulation of dismissal signed by all parties or by  
3 obtaining a court order approving the dismissal. *See* Fed. R. Civ. P. 41(a)(1)(A) & (B).  
4 Plaintiff has not filed a stipulation or sought a ruling from the Court.

5           Second, the notice does not clearly identify the claims Plaintiff attempts to  
6 dismiss. The Court's previous orders denied Plaintiff's requests for preliminary  
7 injunctive relief. Plaintiff states that he is dismissing all claims not related to the appeals  
8 of those orders, but the claims underlying Plaintiff's requests for preliminary injunctive  
9 relief also underlie his requests for permanent injunctive relief. Thus, it is not clear from  
10 the order precisely what claims Plaintiff is attempting to dismiss.

11           **IT IS ORDERED:**

- 12           1. Plaintiff's Motion to Stay Pending Appeal (Doc. 70) is **denied**.  
13           2. Plaintiff's Notice of Dismissal of Claims (Doc. 72) is ineffective. This case  
14 remains in existence and governed by the Case Management Order (Doc. 58).

15           Dated this 27th day of October, 2011.

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19           David G. Campbell  
20           United States District Judge  
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